

Questions from Rep. Tiberi

- 1. The President recently announced an effort to ensure regulations do not cause undue burdens on businesses and their customers. EBSA is in the process of redrawing the fiduciary lines at the same time that the SEC is considering proposing new rules for Broker Dealers in this area. Wouldn't it make sense to coordinate efforts with the SEC to ensure that investors and their financial service providers are not subject to potentially confusing and overlapping rules?**

The Administration, including the Treasury Department and the Department of Labor (DOL), and the SEC are working to ensure that the policy initiatives you describe, if adopted, are consistent and not unduly burdensome. DOL's initiative is in the form of a notice of proposed rulemaking. DOL has received a number of public comments that it will be considering in the course of its deliberations, many of which advocate modifications that would provide greater clarity as to the intended scope of the current proposal. The SEC's initiative is in the form of a staff study that was required by the Dodd-Frank Act. The study recommends that the Commission consider rulemaking, but the Commission has not issued a rule proposal. If the Commission does issue a rule proposal, there will be an opportunity for public comment. As acknowledged in the SEC study, the protections provided to benefit plans, participants and retirees under the Employee Retirement Income Security Act of 1974 ("ERISA") have historically been a separate overlay to the fiduciary protections provided to all investors under U.S. securities laws.

- 2. As you know, Congress debated and then enacted, as part of the Dodd-Frank Act, a directive to the SEC to examine a uniform fiduciary standard of care for broker dealers and investment advisors. Recently, the Department of Labor has proposed an overhaul of the definition of fiduciary that would create a conflicting and confusing standard for service providers and investors regarding investment advice. As a financial regulator, how can you guarantee effective coordination among the various departments and agencies so that conflicting standards for providing investment advice that drive up costs for investors can be avoided?**

The Administration is working to ensure that these policy initiatives are consistent and not unduly burdensome. With regard to process, DOL rulemaking is subject to coordination and clearance within the Administration, including review by the Office of Information and Regulatory Affairs within the Office of Management and Budget. SEC rulemaking is not subject to clearance within the Administration, but the Treasury routinely coordinates with the SEC and other independent agencies with regard to implementation of regulations.

- 3. Some concerns have been raised about the Department of Labor's proposal impacting IRA investors in a particularly adverse way. While Treasury did not draft the rule, it will be tasked with enforcing tax penalties associated with IRA accounts. Has the Treasury Department completed any cost analysis on IRA account holders or the cost of the additional IRS employees that may be needed to enforce the DOL rule as it relates to IRA accounts?**

On October 22, 2010, the Department of Labor (DOL) published in the Federal Register a proposed regulation that would protect beneficiaries of employee benefit plans and individual retirement accounts by revising its definition of the circumstances under which a person is considered to be a "fiduciary" by reason of giving investment advice for a fee to an employee benefit plan or to individuals covered by the plan or IRA. DOL solicited comments on the proposed regulation and proposed that the new definition would only become effective 180 days after a final regulation is published. We understand that DOL has received comments and held two days of public hearings in early March with respect to the proposed regulation.

The term "fiduciary" is defined in section 3(21)(A) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Section 4975(e)(3) of the Internal Revenue Code (Code) provides a similar fiduciary definition for purposes of the imposition of an excise tax on certain prohibited transactions involving plans (including employer plans and IRAs) and certain disqualified persons (including fiduciaries). As noted in the preamble to the proposed regulation, section 102 of Reorganization Plan No. 4 of 1978 transferred to DOL the Treasury Department's authority to interpret section 4975 of the Code. Accordingly, DOL, rather than the Treasury Department, has authority to define who is a fiduciary.

We also understand that DOL has received comments asking that the proposed regulation not apply to IRAs. As DOL reviews and considers these and other comments, the Treasury Department and IRS will be available as resources to DOL in evaluating excise tax enforcement issues that could affect DOL's decisions in developing its final regulation.